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GUIDELINE SERIES

GUIDELINES FOR THE REGIONAL EVALUATION OF STATE AND LOCAL NSR PROGRAMS

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air and Waste Management
Office of Air Quality Planning and Standards
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This report provides the necessary guidance for the evaluation of State and local agencies conducting new source review (NSR) programs. In addition to defining a minimum level of adequate program responsibility, the guideline identifies problems which may be common to a number of agencies. Essential NSR program considerations are described in terms of regulatory requirements and agency operating procedures. Also described is the EPA regional responsibility for auditing State-issued permits for completeness and enforceability. Regions are also expected to document evaluation findings and to prepare a report containing recommended solutions to those difficulties identified. Negotiations with each agency should produce a commitment to undertake steps necessary for program improvement.

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by

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OAQPS GUIDELINE SERIES

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GUIDELINES FOR THE REGIONAL EVALUATION OF STATE AND LOCAL NSR PROGRAMS

1.0 INTRODUCTION

During FY 1978, EPA plans to continue its emphasis on programs for the control of new and modified stationary sources as part of the nationwide goal to attain and maintain ambient air quality standards. An essential part of this emphasis involves a close working relationship with the States in order to encourage and support the implementation of new source review (NSR) programs at the State and local levels of government. In order to gain a full understanding of the current status of State (and local) NSR programs, Regions are required to evaluate the NSR programs administered in each of their States. This requirement is set forth in the FY 1978 Agency Operational Guidance, which defines a minimum, adequate NSR program to include the following:

1. A program to identify sources subject to NSR requirements.
2. An established procedure for review of permit applications, including:
   a. an engineering (emissions) analysis
   b. an air quality impact analysis
   c. a complete inventory and accounting procedure to track PSD increments
   d. RACT/BACT/LAER determination procedures
   e. a description of existing air quality
3. Established procedures by which the State is to seek public comment and by which the State notifies EPA of NSR applications, and,
4. A program for State enforcement of applicable requirements.

It should be understood that before any general pronouncement of program adequacy can be made, Regions must determine that the NSR program not only contains the appropriate requirements and procedures for implementing the requirements, but also that the State can demonstrate the ability to properly perform its approved responsibilities.

1.1 Special Headquarters NSR Visits

In order to get a first-hand indication of how NSR responsibilities are being carried out by States, a Headquarters team, accompanied by at least one representative from the appropriate Regional Office, visited 15 State and local air pollution control agencies during the period from October 1976 to January 1977. During each visit the team gathered pertinent information describing the individual NSR programs. The agencies provided for review such information as State and local NSR regulations, written agency operating procedures, flow diagrams, organization charts, policy memos, and case examples of permit reviews completed or underway. In addition, further information was obtained through a series of questions prepared beforehand and supplemented by questions raised during the onsite visits. It should be noted that the interviews with various agency personnel provided tremendous insight concerning program operations as well as the agency's own NSR philosophy. Such information could not have been provided by only examining the written material provided. For this reason, the Regions are advised to include an onsite visit and interview session for each agency that is evaluated.

The general findings of the headquarters visits indicate that a combination of administrative and technical inconsistencies exist in the way that State's currently implement the NSR program. One of the most obvious findings was that many present air quality dispersion modeling efforts for NSR are in their infancy and lack the desired detail of a comprehensive air quality impact analysis. But this was certainly not the only significant problem observed. This guideline describes the various problems that were identified during the Headquarters visits.

1.2 Use of the Guideline

Regions should use this information to conduct similar evaluations for each State and local NSR program administered within their respective States. In some cases this guideline will likely be useful for planning upcoming evaluation efforts. In other cases, however, it is known that Regions have already begun to evaluate certain NSR programs. Where this is the case, this guideline should serve as a measure of the completeness of such evaluations. Indeed, it may be necessary to re-examine portions of the programs, without unnecessarily duplicating other work already completed.

The discussions pertaining to the headquarters trip findings are provided in chapters 2 and 3. The problems are divided into two categories, namely regulatory and procedural. Although a faulty regulation is usually reflected in terms of an inadequate procedure, one should never make a simple assumption concerning the relationship of one to the other in the place of a close examination of each separately as called for in this guideline.

Because of the potential for widespread inadequacies in NSR regulations and operating procedures, Regions are called upon to audit State permits during FY 1978. Chapter 4 defines the audit responsibility, thus providing a uniform audit approach for all Regions.

Finally, each Region is to respond to the problems which are revealed through the evaluation process by recommending solutions to such problems and by working with the States to solve them. Chapter 5 describes a course of action which is designed to seek program improvements in State and local agencies. Where the desired agency improvements cannot be brought about, additional steps are defined that the Region may need to pursue.

2.0 NSR REGULATIONS

State NSR regulations set forth the legally enforceable framework by which the State is able to evaluate the performance and location of new stationary sources and the modification of existing ones. The Clean Air Act requires that these legally enforceable procedures be a part of the approved State Implementation Plan (SIP). Although EPA efforts in the past have been directed toward the development of totally approvable SIP regulations for new source control, the recent headquarters NSR visits indicate that some regulatory deficiencies and inconsistencies remain. It is EPA's continued goal to work with States to help them to establish SIP's that are in complete conformance with EPA's preconstruction review requirements for stationary sources.

As part of the FY 1978 evaluation commitment, Regions must evaluate the NSR regulations contained in each State's SIP. Unless otherwise specified in this guideline, the Regional Office is expected to use as the basis for comparison the minimum program requirements described in 40 CFR 51.18, including the December 21, 1976, Interpretative Ruling (41 CFR 55524), otherwise known as the "offset policy." Regions should identify those instances where the SIP fails to address a required regulatory provision as well as where a provision is addressed but appears inadequate. It is possible that certain required provisions will not be found in the SIP,

but have been only recently added to State regulations or, more likely, to their agency operating procedures. Nevertheless, when the SIP itself is deficient or inadequate, the appropriate identification and documentation of the problem should be made.

2.1 Permit Denial Authority [§ 51.18(b)]

The SIP must contain the appropriate affirmative language to ensure that a source shall be prevented (via some official denial process) from being constructed or modified unless the source meets any and all preconstruction requirements pertaining to such source. An adequately worded regulation has language to the effect that "no approval to construct or modify will be granted if such construction or modification will result in or worsen a violation..."

Inadequate permit denial authority may be the result of several types of problems that have been identified in some State regulations. The Regional Office should examine the regulations for any of the following:

(1) Non-inclusive regulatory language - Some regulations merely provide that a permit shall be issued if a source complies with the NSR requirements, or that a permit may be denied if a source is determined

to violate any of the requirements. The scope of § 51.18(b) is a function of the scope of § 51.11(a)(4) which requires States to prevent construction of sources when necessary. The example language above is not sufficiently inclusive to assure that such prevention will always occur.

(2) Circumvention of NSR requirements - Some regulations may allow a source to take an alternative course of action (e.g., application of the highest degree of control available) if the applicant is unable to meet any preconstruction requirements. It is proper that sources be allowed to take special action as necessary only if such action will bring the source into compliance with NSR requirements - not if it will circumvent them.

(3) Default provision - This regulatory provision requires that any permit application not reviewed within a prescribed period of time is to be issued automatically. Originally developed to prevent agencies from taking an unreasonable amount of time to review permit applications, such provisions could undermine the ability of the State to prevent sources which would result in violations. (States may, however, deny permits automatically if they want to maintain rigid review time limits.) The

default provision is usually written so specifically that it is not necessary to obtain an interpretation of it from agency representatives. Agency officials may claim that the provision is never used. Regardless, if the provision appears in the State regulations, it is not approvable.

(4) Board or Commission override - Most, if not all, State regulations include an appeal process which is available to sources whose permit requests have been disapproved. Such procedures serve as a legal means of guaranteeing applicants that an unjust or incorrect determination has not been made in denying the permit to them. However, the appeal mechanism should never be used as a means of overriding permit denials that are based on valid technical findings. Some States, when questioned concerning their air pollution control boards or commissions, indicated that they thought permit denials could be overridden on the basis of equity or other non-technical rationale. Such determinations could overlook violations of national standards and, when this occurs, cannot be considered acceptable decisions.

Regional reviewers may or may not be able to identify the ability of the appeals board to (improperly) override valid permit denials by checking the specific provisions of the regulation. If such ability is not clear by examining the regulations, then the appropriate agency representatives should be questioned about this during the on-site interview. EPA--if not the State itself--must intervene whenever a source is improperly granted a permit under such circumstances.

The Regional evaluation must identify any inadequate regulatory language, circumventive options, or other improper regulatory provisions that weaken the State's authority to prevent construction when sources cannot meet the applicable preconstruction requirements. Furthermore, States cannot be allowed to issue permits that do not meet the tests of § 51.18 and other applicable NSR regulations. The Regional Office should act immediately to prevent the issuance of any such permits.

2.2 Information Requirements

States typically require that every applicant provide information which is to be used to evaluate the propcsed source's ability to meet NSR requirements. Until some States began requiring an air quality analysis as part of the preconstruction review process it was expected that the only information needed for review was source-specific information. It is now important that the applicant also submit monitored and/or projected ambient data, and meteorological data when requested by the State. Some States that do not presently perform detailed air quality analyses require that the applicant perform and submit air quality dispersion modeling results of their own. In a few cases, States have been known to require from the applicant the submission of monitored air quality data from prescribed locations as a prerequisite for conducting the new source review.

The Region should determine whether State regulations provide sufficient flexibility to require any and all information needed to conduct a thorough analysis. The evaluation should also take into consideration the types of information currently being required by the agency pursuant to their informational requirements. The Regional evaluator will have an opportunity to discuss this matter with agency representatives during the onsite evaluation.

2.3 Sources Subject to Review [§ 51.18(f)]

States are required to identify in their SIP regulations the types and sizes of sources that are subject to review pursuant to NSR requirements. States have typically responded to this requirement by identifying specific types of sources or equipment that they consider to be insignificant. Such sources are then exempted from review altogether. All other sources are required to undergo agency review and must receive authority to construct.

2.3.1 Source Exemptions - The State SIP(s) should be examined in order to identify any weaknesses in the manner that source exemptions are currently written. The following areas, in particular, should be reviewed:

(1) Routine source exemptions - Most States provide, in regulatory format, a list of sources that are routinely exempt from review on the basis of their predetermined insignificant nature. EPA has not provided firm national guidance as to what sources may be insignificant; thus the list of exempted sources may vary from one State to another. There is reason to believe that some of the sources being exempted from State reviews can emit substantial quantities of pollutants. EPA is now considering further action on the Appendix Q exemption list that was proposed on July 8, 1975 (40 FR 28629). Regions are advised not to require immediate regulatory change, but to identify sources currently exempted by States, which do not appear in Appendix Q, and which experience tends to indicate may not be insignificant sources.

Another type of routine exemption that is written into some State regulations is one that specifies a pollutant load (e.g., 3,000 lbs. per day of certain organics, or 600 lbs. per day of SO_2) rather than identifying specifically exempted sources. Sources emitting less than the specified amount require no control, while those sources emitting more than the specified amount are required to control a percentage of that amount which is in excess. This type of exemption does not take into account a maximum emission rate and could allow sources to make a significant contribution to the air pollutant levels, particularly where poor air quality may already prevail.

(2) Special exemptions for existing sources - Some States have been found to provide special exemptions for certain existing sources that make subsequent operating changes. It has been found, for example, that some existing sources may be exempt from subsequent review if a later source action is specifically classified as either a source "relocation," or "reconstruction," or "replacement." Such sources could conceivably cause violations or contribute to existing violations without any preventive action being taken by the State. While minor routine equipment adjustments or replacements can be exempted, large-scale replacements, (i.e., 50% of the capital cost of the existing source) generally should not be. State regulations that appear to allow existing sources to be exempt from further review without ample consideration of any resulting net emission increases or of the source's changed impact on air quality should be identified.

(3) Vague regulatory language - Some States may unintentionally exempt certain sources because of vague regulatory language. For example, several States' regulations are known to require that sources "which may result in air pollution" must obtain a permit to construct. There is a chance that as a result of this particular language some sources might conclude that they would not cause air pollution and, therefore, would not need to apply for a permit.

There is little doubt that a source must obtain a permit if the regulation applies to sources "from which air contaminants are or may be emitted." This more inclusive language precludes sources from exempting themselves and allows the State to determine the ambient impact of the source once the necessary information has been provided by the source.

State regulations should be reviewed to determine whether unintentional exemptions could result from vague regulatory language. Any potential problems should be identified in the evaluation.

2.3.2 Major Source Requirement - Once specific sources have been exempted from the NSR requirements, all nonexempt sources must be reviewed for compliance with any applicable SIP emission limitations. Beyond this level of review, the Interpretative Ruling (41 CFR 55528) enables States to subject only major sources to an air quality impact analysis and to offset requirements. A specific major source requirement, although not in § 51.18 at this time, will likely be part of the § 51.18 amendment package now

under development. When approved, States will be required to define major sources in their NSR regulations as well as in the approved SIP. In the interim, Regions may accept State operating procedures which achieve the intended purpose of requiring an air quality impact analysis for major sources.

The Regional evaluation should include a review of the State's NSR regulations to determine whether a definition of major source currently exists. If so, the stringency of the definition must be compared to the EPA definition. (See page 19.) It is thought however, that most States have taken a non-regulatory approach by incorporating the definition solely in their agency operating procedures. Further guidance concerning the State's implementation of major source criteria is provided in Section 3.2, beginning on page 17.

2.4 Public Comment Requirements [§ 51.18(h)]

Few States are known to have regulations, in their approved SIP or otherwise, requiring that the public be given an adequate opportunity to comment on the new source reviews. In many cases, when States have responded to the EPA requirement for public comments they have agreed to do so through their operating procedures. Although § 51.18(h) could be strictly interpreted to require all sources to undergo a public comment period, such interpretation is not currently being made by EPA. In fact, EPA is considering an amendment to its public comment requirements stipulating that, as a minimum, only major sources (see page 19) must undergo

the public comment procedure. Therefore, the State's requirements should be examined with the understanding that applicability is only for major sources. (The procedures are discussed in greater detail in Section 3.3, beginning on page 21.)

The Regional Evaluation should identify the extent to which the SIP provides for public comment. Documentation should include (1) whether there is a basic provision for public comment, (2) whether the procedure includes all of the required provisions of § 51.18(h), and (3) whether the procedure is required for at least all major sources.

3.0 NEW SOURCE REVIEW PROCEDURES

The administrative and technical procedures which States develop to describe their new source review process must provide them with an adequate method to evaluate each permit application in accordance with the minimum requirements set forth in 40 CFR 51.18. If the procedures fail to do so, the Regional Office should identify the specific deficiencies and areas of weakness and set forth plans to work with the State to the extent necessary to develop fully workable NSR procedures.

States describe their NSR process in various ways. The description will generally include some combination of organizational charts, flow diagrams, standard operating procedures, policy memoranda, and, perhaps, even manuals. This information is extremely useful in order to gain a good overview of the particular agency subject to evaluation. The Regional Office may already have this information on hand; otherwise, a request should be made to the State agency in order to obtain the most up-to-date information. Once the Regional evaluator has reviewed available written descriptions of the State NSR process, it will be possible to anticipate some of the problems that may exist relative to § 51.18 requirements. However, it will almost certainly be necessary to sit down with agency representatives to discuss the procedures in order to get the "full story" of how the agency operates.

The Regional evaluator must always be concerned with the ability of the State procedures to comply with applicable NSR requirements, however, administrative concepts for which there are no specific requirements must also be appraised. This is especially important since most States appear

to exhibit a certain degree of uniqueness in the way that their NSR process is implemented. This is not to say that any specific approach is always more appropriate than another, but that the administrative framework chosen by any State should provide for effective implementation of NSR requirements. For example, the evaluator must know the type of approval system that the State administers. Some programs require a permit to construct and a permit to operate; some only a permit to construct; while others require a "plan approval" as opposed to a "permit" per se. Responsibility-sharing and internal communications may depend upon the degree of program centralization (or decentralization). Some programs assign little or no direct review responsibility to field office personnel, while others rely heavily upon their technical support. In fact, there are States which delegate permit-issuing authority to field engineers.

If administrative time constraints have been legally placed upon the review process (e.g., 60-day review period), this may have an impact on the review, often by requiring that various phases of the review be completed within prescribed time limits. Such limits may facilitate a smooth, efficient review process or they could impose restraints that result in incomplete or inaccurate reviews.

The remaining sections in this chapter describe for the Regional evaluator program areas where particular attention should be devoted in order to adequately address the acceptability of the State's NSR procedures. Whereas most of the discussions deal with required areas of performance, some do not. The evaluator should not hesitate to identify any procedure, special policy, analytical technique, or any other consideration that may limit the State's ability to implement a NSR program consistent with EPA requirements.

3.1 Preliminary Application Review

At the outset, each permit application is usually checked by a State engineer to determine whether all required information has been supplied by the applicant. Particularly where the State procedure contains mandatory time constraints for either requesting additional information from the applicant or for conducting the entire review, it is important that this preliminary task be performed as soon as possible. In any case, a review of the application for completeness should consume as little of the overall review time as possible, while still providing reasonable assurance that the necessary information is correct and complete.

The Regional evaluator should note that while no EPA requirements address this aspect of the review process, at least two possible areas of consideration exist where certain recommendations may assist the State in providing a greater degree of permit processing efficiency.

3.1.1 Application forms - States that have been using the same application forms for a number of years may find it necessary to supplement such forms in order to accomodate the receipt of special informational requirements such as those described in Section 2.2, page 9. When additional informational requirements are made it is important to include clear, concise instructions for properly completing and submitting the information. Agencies may unnecessarily expend valuable time in repeated communications with an applicant who is unable to fill out forms completely and accurately because of unclear or misleading instructions. Such instructions can be included on the reverse side of a form, or on a separate sheet, as desired.

During the onsite evaluation the Region should seek to learn whether the agency typically experiences defficulty obtaining the correct information from a source. If inadequate instructions may be even a partial cause of the problem, the Region could recommend the development of more definitive instructions.

3.1.2 Pre-application conference - Some States have indicated that meetings held with the applicant before a formal application is submitted provide an excellent opportunity to define and clarify information requirements as they apply to specific sources. This option, though voluntary on the part of the agency and the source, appears particularly useful for those sources whose informational requirements may be extensive. In some cases, a pre-application conference with a number of prospective applicants called together may be the most effective way of disseminating all relevant NSR requirements

3.2 Implementation of Major Source Criteria

States have typically reviewed each stationary source to determine whether it will comply with applicable SIP emission requirements. It has only been within the past year or so, however, that any States have begun to perform an air quality analysis to determine new source compliance with ambient standards. In doing so, States have independently sought to limit their performance of the resource intensive modeling exercise to only those sources whose impact was thought to be significant in terms of their emission rate, or sometimes in terms of the location or

the controversial nature (public acceptability) of the proposed source. Consequently, a number of independent, and generally inconsistent definitions of a "significant" source are currently in use. These definitions are rarely found in the State regulations. Instead, most States have chosen to incorporate the definition in their operating procedures without supportive regulatory language at this time.

EPA will accept a major source definition when contained only in the State's operating procedures if it can be demonstrated that such definition is equivalent to the EPA definition as provided by § 302(j) of the Clean Air Act. Regions should note that this new definition supercedes the major source definition set forth by the Interpretative Ruling (41 CFR 55528) when conducting a NSR evaluation. States will not be expected to implement the new definition until the interpretative ruling is actually amended. The effective definition defines as a major source "any major facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant..." Forthcoming NSR requirements will reflect this definition.

In the event that a State is now applying a less stringent definition, it will become necessary to determine, if possible, the types of sources most likely to be omitted from the State's air quality impact analysis. Subsequently, precautions must be taken to assure that sources defined as major by EPA, but omitted by State definition, receive the proper depth of review prior to final permit approval. The Regional evaluator must also determine that the State's application of major source criteria is thorough. This is done by ascertaining that the major source criteria is applied

to the emission rates resulting from the entire stationary source. A stationary source is composed of one or more pollutant-emitting facilities. Some States issue permits for each separate facility or emission point that is part of the stationary source. In doing so, there is a chance that each facility (or emission point) will be reviewed independently, and only the emissions from that particular component of the source will be compared to the major source cut-off level. The obvious result is that a 120 tons per year major source consisting of three facilities will be reviewed in terms of its three separate facilities (e.g., 30 tons, 40 tons, 50 tons) and would not be ruled subject to the air quality impact analysis required for major sources.

3.3 Public Comment Procedures

Not all States are providing ample opportunity for public comment. Some States claim, however, to be doing so in ways other than the minimum requirements described in Section 51.18(h). An example of this is a procedure by which periodic public notices are published (1) summarizing the receipt of numerous permit applications, and (2) announcing permits that have been issued. The public is thus informed only in a very general way of agency permit actions (with essentially no source-specific information prepared for public inspection), and is not provided with a specific invitation or time within which to comment. For these reasons, the example procedure is considered to be an inadequate public comment procedure.

Pursuant to EPA requirements for public comment, States must issue a public notice summarizing the proposed permit action, and make available for public inspection sufficient information concerning that proposed action. "Sufficient information" is to include the following:

- The information submitted by the applicant (excluding confidential information).
- The agency's technical analysis of the effects of the proposed source.
- The agency's tentative approval or disapproval, including any specific conditions for approval.

Even when State procedures adhere to the itemized requirements of § 51.18(h), few States, if any, currently require that all new source reviews be submitted for public comment. Oftentimes, the State implements its public

comment procedure based upon the same criteria used to perform an air quality impact analysis (See Section 3.2). As previously mentioned, such criteria may or may not be as stringent as the EPA definition of major source. EPA does not have any provisions for limiting the opportunity for public comment only to major sources. Such a provision is being considered, however, and it appears to be reasonable. In the interim, therefore, Regions can accept procedures that limit public comment to major source reviews.

Each State's public comment procedures should be reviewed according to how they are being implemented. Regional evaluators should determine (1) whether any public comment procedure is currently being used, (2) whether all of the provisions of § 51.18(h) are actually being followed, and (3) whether the agency provides an opportunity for public comment on at least those reviews involving major sources (EPA definition). These topics should be fully addressed by discussing them with agency representatives and also by examining completed permit reviews.

3.4 Engineering Analysis

3.4.1 Independent Analysis - Each State is expected to have adequate procedures (and sufficient numbers of qualified engineers) to perform an independent engineering analysis. An independent analysis requires that any engineer assigned to a permit review be capable of thoroughly reviewing and evaluating the basic equipment and processes according to the stated operating conditions, and evaluating the approach the applicant

has taken in the design of the air pollution control system--not merely searching for mathematical errors in the emission calculations submitted with the application. The engineer will have to assess the information contained in the application and should generally make his own calculations to judge the necessary source compliance.

The engineering analysis of an air pollution control system should include the following technical information:

- The types of pollutants emitted by the source
- Rate of contaminant emissions of each pollutant
- Volume, temperature and % H_2O of gas to be handled by the air pollution control system
- Adequacy of the design of the air pollution control system
- Efficiency of the air cleaning device(s)
- Reliability of equipment to meet standards on a continuing basis.

A discussion of the procedures for evaluating permit applications and some example engineering reviews are contained in Chapters 5 and 6 of the "Guide to Engineering Permit Processing" (APTD-1164). This information is appropriate background material for Regional evaluators who will be talking to engineers during the onsite evaluation. The evaluator will also find the information useful for the permit audits where specific engineering analyses will be examined on a first-hand basis.

3.4.2 Emission Factors - Agencies appear to be relying heavily upon AP-42 emission factors to estimate the emissions from most sources. The AP-42 document was not originally intended for use in estimating the emissions

from specific single sources or processes, nevertheless States use it because developing more accurate factors on their own is time consuming and costly. In several cases States have developed their own factors for selected source categories. Some States have even chosen to adjust AP-42 emission factors to obtain more "believable" results. States should be questioned concerning their ability to derive emission estimates from other available methods (e.g., stack test results, emission measurements from identifical or similar sources, material balance equations, and emission factors developed from similar sources). Wherever possible, States should be encouraged to place a lesser degree of reliance on AP-42 emission factors and a greater reliance on more source-specific estimating methods. The evaluation should address the State's dependence on AP-42 emission factors relative to other methods that it has been known to utilize.

3.4.3 BACT/LAER Determinations - An important aspect of each State's engineering responsibility concerns the growing need to define, on a case-by-case basis, best available control technology (BACT) and lowest achievable emission rate (LAER). Engineering determinations will play an essential role in allowing new major sources to locate in areas already exceeding national standards. New sources of organic emissions represent a particular area of difficulty for many States who claim to have little technological experience with volatile organic compounds (VOC) control concepts. It is quite apparent that States will need EPA technical assistance in order to make some of the engineering determinations that will be forthcoming. Moreover, the extent of such assistance will depend upon the current technical capabilities of the State.

The Regional evaluation must address the issue of technical assistance in order to appropriately plan for the allocation of regional resources. Specific agency experience should be identified as well as any plans for the training of engineers to expand their present capabilities. Where possible, the evaluator should identify in each State the specific types of sources for which BACT/LAER determinations may have to be made. EPA assistance to States is further discussed in Section 5.3, page 41.

3.4.4 Documentation - Each engineering analysis should be fully documented and routinely retained as part of the agency's permit file. This documented work is the clearest evidence of an independent analysis. Moreover, the results of the engineering analysis may comprise, in whole or in part, the legal grounds for approving or disapproving the application. The agency will be expected to respond on the basis of well-documented facts and conclusions to any appeal made against the final permit decision. State reviews which have been examined often suffered from poor documentation. Emission calculations were not always provided or were incomplete. Sometimes, even when it was apparent that work had been done, pages were missing from the permit folder.

The engineering report should contain the following:

- Source data and operating conditions.
- Technical assumptions, including references to technical support documents.
- All calculations made by the State engineer.

- Summary of findings, including the identification of any design deficiencies and recommendations for modifications.
- Conclusions, indicating the status of compliance with applicable emission requirements.
- Recommendation for approval or disapproval of application (major source approvals also subject to air quality impact analysis and public comment).

The adequacy of documentation should be ascertained as a result of the permit audits which are discussed further on page 34. Regional evaluators finding inadequacies in the State's engineering documentation should discuss the problem with agency officials and stress the importance of well-documented analyses.

3.5 Air Quality Impact Analysis

In most States currently demonstrating modeling capability, agencies have incorporated the air quality impact test into their NSR procedure only within the past year or two. Some relatively sophisticated air quality modeling techniques are being used in some cases, but all States appear to need substantial improvements in their overall procedures in order to conduct a comprehensive air quality impact analysis. This section addresses the major aspects of a comprehensive air quality impact analysis. It is not intended to be a technical presentation of modeling techniques since EPA has and continues to develop modeling guidelines which serve that specific purpose. Instead, the discussions will focus on the concept of a "total analysis." It will be left for the Regional Office to make a judgment as to where the State procedures currently stand, and what specific areas of improvement are necessary.

3.5.1 Status of Air Quality Modeling Function - Each State should identify all of the models that it has the capability of using. The use of the term "models" here includes all techniques for estimating ambient air quality concentrations, including simple screening techniques and programs for pocket or desk calculators, programmable calculators, and computers. Whatever techniques are used should be well defined and some procedural documentation of each technique should be maintained by the agency. Where such documentation does not exist, States may find themselves relying upon the expertise of one specialized person, and should that individual leave the agency, there is generally no one else who could duplicate the technique in a timely manner or explain analyses already performed. (The documentation will also assist sources in knowing how their own air quality analyses will be evaluated by the agency.)

Included in the Regional evaluation of the State's modeling function should be (1) the identification of pollutants that the agency has or intends to analyze with each available technique, and (2) the conditions under which specific techniques are implemented. The extent to which a specific air quality model is suitable for use will depend upon several factors, including:

- The detail and accuracy of the State's data base (i.e., emission inventory, meteorological data, and air quality data).
- The meteorological and topographic characteristics of the area.
- The technical capability of individuals undertaking such techniques.
- The resources, in terms of monies and facilities available for State utilization.

Each of these factors should be considered in evaluating the State's ability to use any models available to them, as well as for upgrading the State's modeling capabilities when necessary.

It should be noted that many States may not have facilities of their own for running sophisticated models (i.e., computer-based models). Some agencies utilize computer facilities available at other governmental office locations, while others may operate under contracts with local universities or private concerns. Such arrangements should be identified and special note made of the type of arrangement (e.g., time-sharing) and the average turnaround time for test results. Any potential difficulties with such arrangements should be identified.

Some States may not perform the NSR air quality modeling analysis and thus require that the source prepare its own (generally via contractor assistance). When the source is required to submit a modeling analysis to the agency, it is essential that the agency be fully capable of evaluating the data and the analytical results. States should not accept the source's analysis without an appropriate level of in-house review. The Regional Office should assess any and all techniques used by State agencies to ascertain the accuracy and validity of both input data and modeling analyses that an applicant submits.

3.5.2 Background Air Quality - Most State air quality impact analyses stress only the impact or contribution to ambient pollutant concentrations anticipated from the proposed source. As a result, some States tend to establish arbitrary limits, based on the percentage of the applicable NAAQS or PSD increment, that

any source may contribute. To varying degrees, some States do account for the ambient contribution from natural causes, area sources, and "existing" stationary sources. Often neglected from background air quality considerations is the impact of new sources which have already received approval to construct but are not yet constructed and/or operating. These sources must be considered existing sources for the purpose of subsequent new source reviews. A complete analysis requires that the pollutant concentrations from the proposed source be added to the appropriate background levels resulting from new source growth up to the proposed source's start-up date to determine the source's impact on the NAAQS.

The Regional evaluation should consider the extent to which agencies currently consider background levels for the NAAQS. Each agency should be asked to describe and to provide any documentation of the procedures for using its air monitoring network, specific modeling techniques, or any combination thereof for background determinations. Any problems which prevent the State from adequately taking into account background levels for new source reviews should be identified, whether they be resource problems, procedural problems, technical problems or others.

3.5.3 Averaging Time - It is generally assumed that the short-term conditions will be the "controlling" ones for most new stationary sources. For any specific review, however, the State analysis should not overlook the

long-term situation when there is any reason to believe that the annual standards (NAAQS) or air quality increment may be violated. On the other hand, most States that give consideration to ambient background levels seem to give considerably more attention to the annual background than to the short-term (more difficult to derive) air quality background.

State procedures should be checked to see whether there are adequate provisions to determine both long- and short-term background concentrations. The use of monitored air quality data should be discussed with agency personnel. Where monitored data cannot be obtained from an appropriate local site, the use of "regional" sites or prediction from multisource models should also be discussed. Any resulting problems should be identified and discussed in the evaluation report.

3.5.4 Allowable Emissions - The air quality impact analysis (whether completed by the State or submitted by the source) must take into account the allowable emission rate of the proposed source. The allowable rate is defined as the applicable NSPS, the applicable SIP emission limitation, or an emission rate agreed to by the source as a permit condition, whichever of these is less. There are some instances (e.g., large buoyancy sources) when maximum ground level concentrations may occur at levels less than the allowable rate and such critical emission rates should also be given ample consideration. However, the point of emphasis here is that some States have been found to use only the actual emission rate even though it may be substantially less than the legally allowable rate for such source. Use of and the actual rate is inadequate because the maximum legal source impact could be underestimated. Moreover, the agency would have no legal means of preventing the source from subsequently emitting up to the allowable rate.

The State's analytical procedures should be reviewed to determine whether allowable emission rates are used routinely for air quality impact analyses. States that do not should be immediately advised of the possible subsequent legal hazards. The State must also make this requirement known to potential sources.

3.5.5. Critical Meteorological Conditions - In order to estimate the maximum ambient air quality impact of a proposed source, including the appropriate background considerations, State procedures must take into account the critical meteorological conditions which can reasonably be expected to occur within the area of concern. Some States have expressed difficulty in being able to consistently do this. Typically, States base their impact analysis on a single year of data. This is acceptable but multi-year data is more desirable when available. Regional evaluators should discuss with agency modelers the specific meteorological data base being applied by the State and assist them in arriving at an acceptable number of years of data to use to account for meteorological variations and climatic extremes. The agency should be asked to describe and provide documentation of its procedure for identifying the "critical" meteolorological conditions that are used to arrive at a final air quality estimate. Consideration should also be given to whether the appropriate meteorological data is being used in each of the models the State uses.

3.6 Final Permit Determination

The final determination to issue or deny a permit is to be made only after careful consideration has been made of all applicable NSR requirements, including public comment. If the evaluation has already identified a regulatory provision that allows the State to circumvent a specific NSR requirement, the operating procedures should also be checked to see how such a provision is implemented. It is possible that the States may never implement an improper regulatory provision as common practice. On the other hand, State procedures should not allow circumvention of NSR requirements where regulatory provisions clearly prohibit such circumvention. For example, some States have expressed a "lack of faith" in their air quality modeling results and are thus reluctant to deny a permit on the basis of projected ambient air quality violations. As a result, the modeling results are sometimes used as a negotiating tool to achieve a greater degree of emission control, but not as a criterion for the final permit determination. The Regional evaluation should include specific questions designed to allow agency personnel to expand upon agency practices that are not readily apparent from reviewing the State's procedures.

A final determination which is forced upon the agency by a regulatory default provision (e.g., automatic approval after 90 days) was described in chapter 2 as being unacceptable. The same is true of appeal board decisions which may overrule an agency's decision to deny a permit that is based on valid technical findings.

A final determination to issue a permit should be accompanied by specific conditions of that approval. The State procedures should provide for the routine conditioning of permits and, where applicable, might include such qualifying conditions as:

- Construction start and completion dates
- Fuel usage and specification
- Operating hours and days
- A requirement for approval from the agency prior to the implementation of design changes which may affect the nature and amounts of emissions
- Specific instructions regarding the location of permanent scaffolding and sampling ports
- Testing methods
- Maintenance of equipment.

In addition to the above typical standard permit conditions, special conditions may be necessary. For example, in the event that a source may be required to control emissions to a greater degree than the normal SIP or other allowable limit (e.g., NSPS), the more stringent limit must be firmly established as an enforceable permit condition. Moreover, any special agreement which may be subject to future enforcement action, and is a prerequisite for permit approval, should generally be included as a permit condition. The State's procedures should also provide for a legal review of special permit conditions to ascertain their enforceability.

4.0 PERMIT AUDITS

Permit audits are an integral part of the Regional commitment to evaluate State NSR programs during FY 1978. Since the audits will generally continue past the planned completion date of other evaluation activities already described, it may be possible to anticipate the types of problems that many audits could reveal. On the other hand, the audits could be instrumental in the identification of problems that might not otherwise be discovered. It is possible that the Region may find it necessary to re-examine certain aspects of the State program in the event that unanticipated problems are revealed during an audit, which are repeated in a number of the permits audited. However, whether the identification of a problem actually justifies further study of the State program or not, it certainly means that the permit(s) should not be issued until the problem has been resolved to the Region's satisfaction.

4.1 Definition of Permit Audit

The FY 1978 permit audit is defined herein as a two-phase examination of State permits. Specifically the audit responsibility is to be fulfilled by 1) a thorough examination of the State review which forms the basis for their preliminary determination, and 2) a follow-up review of the completed permit package when the State has reached a final determination.

The two-phased approach is prescribed because an effective permit audit must not only consider the final outcome of the permit review, but should also be performed at such time during the review process when corrective action can most readily be taken to ensure that the final

outcome is correct. Once a permit has been issued by the State, it becomes an involved task to seek appropriate legal action to invalidate one that has been improperly issued.

4.2 Submitting Permits for Audit

In order that the first part of the permit audit can be completed it is necessary for States to submit a permit package to the Region during or sometime before the formal public comment period. This may present a particular problem insofar as some States are not known to provide an opportunity for public comment at this time. For such States, it will be necessary to inform them as early as possible, prior to other evaluation activities, of the need to submit permits for Regional auditing. While all States must eventually provide an opportunity for public comment, they should be required immediately to agree to forward permit reviews to EPA as they become available. Regions should seek further headquarters guidance in the event that an agreement cannot be reached with any State or local agency concerning this matter.

Once received, each permit should be audited in sufficient detail to ascertain that 1) the appropriate steps have been followed, 2) adequate documentation is provided, and (3) the preliminary determination is consistent with technical findings. A recommended format is provided for completing each permit audit. This, or a similar format, may be used as a checklist to document each audit. Only where specific problems are identified is it necessary to provide additional information and comment.

The State should be notified immediately if the audit identifies problems. Corrective action should be sought during the public comment period or as soon thereafter as possible. Following the return of comments and recommendations to the State, it may be necessary to work closely with the State to prepare an adequate permit review. In any case, the Region should monitor the subsequent status of the review until the issuance of the final permit determination.

The audit of each permit is complete when an acceptable final permit determination is made. It will be necessary to review any public comments, as well as the State's response to such comments (including modifications to the technical analysis), and all conditions for approval as part of the final phase of the audit.

4.3 Sources Subject to Audit

The FY 1978 Agency Operational Guidance specifies that the Regions commit to a level of SSR and PSD permit audits for Class A sources, which are major sources as defined by § 302(j) in the Clean Air Act, as amended. Regions will be expected to audit as many major source permits (at least 10%) issued during FY 1978 as possible within available resources and workload. A reasonable estimate can be established by using historical data for permits issued by the State as well as the State's projections for the FY 1978 period. Highest priority for auditing should be given to permits involving non-attainment problems (i.e., offset conditions apply).

5.0 NSR EVALUATION FOLLOW-UP RESPONSIBILITIES

The actual evaluation of each State program is to be followed by a Regional plan which identifies specific program problems and recommends solutions for them. The success of the Regional effort involves not only a thorough program evaluation, but the ability of the Region to produce a plan containing workable solutions that the State will agree to. This final chapter addresses the recommended course of action for the Regions to follow in order to pursue the necessary program improvements in NSR programs.

Two factors must be taken into account during the development of solutions to a State's NSR problems. First, the primary thrust of this evaluation effort is to retain as much of the direct responsibility for carrying out NSR's with the State as possible. EPA's role should focus upon program guidance and technical assistance to strengthen the State programs. Second, the Regions are being called upon to seek program changes at a time when work is underway to amend the § 51.18 NSR requirements. When the amendments are completed, States will be required to make certain changes in their NSR regulations.

At first sight it might appear inappropriate to induce program change at a time when regulatory changes are impending. Yet, interim corrective measures are not only feasible, but quite necessary if the Regions are to ensure that State-issued permits conform to applicable NSR requirements set forth by EPA. Furthermore, as States begin to develop plans of their own to broaden their NSR responsibility for PSD as well as for new source control in non-attainment areas, it is imperative that all facets of the basic programs now in operation be strengthened as expeditiously as possible.

The sections that follow describe responsibilities that are to be incorporated within a plan of corrective action. Briefly, these activities are designed to 1) provide recommendations for program improvement mainly through changes to agency operating procedures, 2) require the reporting, by States, of certain actions defined by the Region, and 3) commit EPA support to any agency where such need is identified. The overall plan is an interim approach to resolving the problems that weaken current program operations, yet without interfering with the overall objective of seeking appropriate regulatory changes which result in an approvable SIP.

5.1 Recommending Program Improvements

Effective feedback to the State and local agencies will be instrumental in bringing about the improvements which the Regional Office deems necessary. As a minimum, feedback should be provided at two particular stages during the evaluation process; first, immediately upon completion of the onsite program visitation, and second, after the Region has had time to prepare and document solutions to the identified problems.

Regional evaluators should set aside time at the conclusion of the onsite visit to discuss the preliminary findings with the appropriate agency representatives. No formal negotiations are to take place at this time; an oral summary of the agency's potential problems is all that is intended. It is possible that during the ensuing discussion, if any, agency officials may be sufficiently convinced that certain difficulties can be adequately resolved without the need for formal negotiations. On the other hand, the agency may be able to clarify any misunderstandings

that the evaluator could have obtained during the evaluation. In any event, whether this immediate feedback actually resolves any problems or not, it will provide the agency with a general understanding of the Regional assessment of their current program status.

The preparation of a written plan, documenting specific agency problems and recommending solutions to them, should focus on the agency's operating procedures as much as possible. The realization of more immediate corrective action is a desirable feature of procedural rather than regulatory changes in addition to the other reasons for not seeking widespread regulatory changes at the present time. When situations seem to necessitate regulatory change, however, Regions are advised to contact Headquarters for precise guidance concerning the feasibility of specific changes being sought. Consideration should also be given to the idea of seeking State participation in the drafting of solutions. The agency's own insight insofaras what it can or cannot be reasonably expected to accomplish in a particular manner or by a certain time could avoid lengthy negotiations at a later date while still arriving at reasonable solutions.

Once a plan has been completed, with or without prior consultation with the appropriate State or local agency, all recommendations should be formally presented to the agency. On certain parts of the plan, an agreement may be reached immediately, although full implementation of a new or revised procedure may involve some delay. Interim reporting may be required. This is described in the following section. Where certain changes are to be gradually developed or phased in, specific milestones

of progress should be required for subsequent monitoring by the Region on a periodic basis. Where changes may require a significant resource commitment by the agency, the grant process should be used to negotiate the final agreement. The final agreement should include not only the changes agreed to, but the details of the commitment in terms of responsibilities to be assumed, manpower requirements, and monies to be expended.

It is EPA's objective that the State be given every opportunity to implement, and thus retain primary responsibility for, as many NSR responsibilities as practicable. The ultimate inability to successfully negotiate the appropriate corrective measures with each State may result in the assumption of unwanted program responsibility by the Regional Office. The importance of seeking direct State involvement cannot be overstressed.

5.2 Reporting Requirements

In conjunction with any agreement to bring about changes in a State's current mode of operation, the Region must require the State to report on any permit action which when taken would lead to the issuance of an improper permit approval. This requirement applies to situations where 1) a State agrees to a change but additional time is required for full implementation to occur, and 2) a State does not agree to make necessary changes in its program. The Regional should identify those specific situations where reporting is to be required. However, it may not always be possible for the State to report prior to the action being taken in certain instances. Such a case is when an air pollution hearing board improperly overrides a permit determination made by the reviewing agency. It will be possible

to report beforehand, for example, on permits that would have to be issued pursuant to a default provision (see page 7). Once reported, appropriate action would have to be taken to see that the applicable review requirements are met before a permit is issued. Hopefully, the State will continue to conduct the necessary review once the Region acts to override the particular problem at fault.

5.3 EPA Assistance to States

The third part of the plan should include a Regional commitment to provide program guidance and technical assistance as part of the overall upgrading of the State NSR program. Regional assistance is likely to be a major concern when RACT/BACT/LAER determinations are called for. Headquarters has developed a clearinghouse function to facilitate the distribution of such determinations as they become known. In this way, when a new control technology is put into practice all States can be informed of it. Regions will be advised of continuing developments in this particular area.

Since most States have not entered into the modeling of new sources until recently, various types of assistance will probably be needed to conduct an adequate air quality analysis. EPA modeling guidelines should be made available to States and special training efforts may be justified to expand a State's current level of expertise. Regions should call upon headquarters for assistance in terms of special contracting support or direct manpower support as needed.

APPENDIX A
EXAMPLE PERMIT AUDIT FORM

I. PRELIMINARY AUDIT

A. Background Information

1. State _____

2. Agency Name and Address _____
_____

3. ___ New Source
___ Modified Source

4. Brief Description of Site Location:

5. Date Application Receive by State _____
Date Preliminary Determination Completed _____

6. Agency Prepared (Adequate, Inadequate) Public Notice.

B. Engineering Review	YES	NO
1. Agency conducted independent analysis	___	___
2. Agency calculated allowable emissions	___	___
3. Agency calculated actual emissions	___	___
4. Agency calculated potential emissions	___	___
5. Agency used AP-42 emission factors	___	___

6. Applicable degree of control (circle one):

a. SIP b. BACT c. NSPS d. LAER

C. Air Quality Impact Analysis	YES	NO
1. Agency applied a simple screening technique	___	___
2. Agency applied more detailed dispersion model	___	___

3. Assessment included (circle appropriate items):

a. NAAQS: Annual standard Short-term standard

b. Background air quality: Annual impact Short-term impact

c. Emissions: Actual Allowable

D. Remarks:

II. FINAL AUDIT

1. Permit___ Approved___ Disapproved___ Other Action__(specify)

2. Agency ___Received public comment
___Responded to public comment

3. Permit Conditions: ___Standard Conditions of Approval

___Special Conditions Developed

___Conditions Appear Enforceable

___Conditions Appear Sufficient

4. Conclusions:

___Permit Determination is Consistent with Agency Analysis

___All Information Necessary for Audit was Readily Available

___Permit Review was Well Documented

___Technical Support Data Maintained in Permit File

5. Remarks:

APPENDIX B
NSR CHECKLIST USED FOR HEADQUARTERS STUDY

I. PROGRAM OVERVIEW

A. Program Philosophy

1. Current NSR responsibilities SSR___ NSPS___ PSD___ NESHAP___
2. Political climate for NSR (Gov/mayor, Agency, public, etc.)
3. Program priority for NSR
4. Plans to accomodate new source growth via SIP revisions
5. Emphasis on public involvement
6. Role of modeling in NSR

B. Organization

1. Organization structure, lines of responsibility
2. Types of people involved (focal point?)
3. Hdqtr/District operations (communic, supervision, overview)
4. Roles of other agencies
5. Anticipated changes

C. Resources

1. Approximate $ for NSR (% personnel, % equipment)
2. Number of persons involved
3. Available equipment (access to computer?)
4. Status of emission inventory
5. Number permits reviewed annually (major sources)

II. PROGRAM IMPLEMENTATION

A. Source Applicability and I.D.

1. Define: source (plant, facility, emission point)
   major source - modified source
2. Source exemptions (which ones) (what criteria)
3. Source identification
4. Source tracking system (status, exempt sources, approval/disapproval)
5. Central NSR file

B. Permit System/Engineering

1. Standard application forms
2. Information requirements
3. What emissions are considered (allowable - SIP/NSPS, fugitive, actual, worst case, peak loading)
4. Emission estimates (emission factors, % control, specs.)
5. RACT/BACT policy
6. Application check points (completeness, tech accuracy, emission verification)
7. Length of typical review (major review)

C. Air Quality Assessment

1. Types of models used by agency (individuals responsible)
2. When is modeling performed (source size, special conditions)
3. Screening techniques
4. Can source be required to model/monitor
5. Background determination (long-term/short-term) (methods)
6. Access to meteorological data (use of meteorologist)

7. Documentation of analysis

8. Incorporation of modeling with engineering analysis

III. ENFORCEMENT

A. Legal Authority

1. Legal guidance (APC lawyer, other)

2. When can agency legally prevent permit

3. Can agency legally require - source to model/monitor; permit conditions; controls > NSPS; any information; emission tradeoffs

4. Enforce AQ - on plant property; over water bodies; rough terrain; no receptors

5. Authority to accept delegations

6. "Interfere with attainment or maintenance of NAAQS' 'non-attainment area'"

B. Surveillance

1. Enforcement responsibility (what agency, persons)

2. Procedure for enforcement action

3. Current surveillance activities

4. Source compliance with preconstruction information (inspections, source test, reporting requirements)

5. Permit violations (preconstruction, post-construction, post-operation)

6. What permit information is enforceable (emission data, control equipment, % efficiency, process information)

7. Responsibility for subsequent violations (after approval)